521.

SUPREME COURT OF THE UNITED STATES.

No. 87.

JOHN M. BASS ET AL., PLAINTIFFS IN ERROR,

vs.

HENRY HOLLINGSWORTH, MAYOR OF NASHVILLE, ET AL.

IN ERROR TO THE SUPREME COURT OF ERRORS AND APPEALS OF THE STATE OF TENNESSEE.

INDEX.

	Original.	Print.
Bill of complaint	1	2
Answer to bill of complaint	5	5
Decree of the court of chancery	7	6
Appeal prayed and allowed	7	6
Appeal bond	7	6
Clerk's certificate	8	7
Proceeding in supreme court of errors and appeals	8	7
Decree	9	7
Clerk's certificate	9	8
Writ of error	10	8
Citation and service	11	8

J. & G. S. GIDEON, printers.

STATE OF TENNESSEE:

Be it remembered, that a transcript of the record in the case of Bass, Green and Elliston, against Hollingsworth, Woods and Erwin, was filed in the office of the clerk and master of the supreme court of error and appeals, at Nashville, on the 12th day of December, A. D. 1838, in the words and figures following:

STATE OF TENNESSEE:

At a court of chancery begun and held at Franklin, on [the] 4th Monday in October, being the 22d day of October, A. D. 1838, for the 15th district of the middle division of said State: Present, the honorable Lunsford M. Bramlet, chancellor, &c.

Be it remembered that, on the 18th October, 1838, a bill of complaint was filed in this court, which is in the words and figures following, to wit:

To the chancellor of the middle division of Tennessee, the bill of complaint of John M. Bass, H. L. P. Green, and J. T. Elliston, citizens of Davidson county, Tennessee, complainants, against Henry Hollingsworth, mayor of the city of Nashville, Robert Woods, and John P. Erwin, *of said* of the said county and State, defendants.

Your orators show unto your honors, that on the 5th day of November, 1831, the legislature of Tennessee passed an act of Assembly entitled, "an act to authorize a lottery for the continuation of Union street, in the city of Nashville," which act your orators pray may be taken as a part of this bill of complaint, and which is to be found in the pamphlet laws of the session of 1831, "private acts," chapter 67. By the first section of said act, the mayor of the city of Nashville, Robert Woods, John P. Erwin, Henry R. Cartmell, and your orator, John M. Bass, were appointed trustees, with full power and authority to manage and superintend the drawing of a lottery, for the purpose of raising a sum of money not exceeding seventeen thousand dollars, to be applied to the opening of a street in the city of Nashville, from College street to Market street, being a continuation of Union street, upon such scheme, in one or more classes, as they or a majority of them may think best. The persons above named in said act of Assembly, named as trustees, did take upon themselves the power, authority, and trust, with which they are therein and thereby invested; and in the execution thereof they made a contract with Messrs. Spofford & Estill, and also with John L. Brown, exchange and lottery brokers, in Nashville, for the drawing of a number of classes of the lottery, receiving for the benefit of the street a certain per centum of the amount of money in each class. The said brokers under said con-

tracts drew several classes of said lottery, paying the trustees the sums to which for the terms thereof they were entitled, until they paid upwards of six thousand dollars, which was safely invested by said trustees, so as to be accumulating interest. Said brokers then gave up the contracts, and no one for a long time offering to carry on the business, and it having been ascertained that the amount necessary for opening the street would not fall short of fifteen or sixteen thousand dollars, the prospect of opening the street at all became very remote and unpromising. Your orators, therefore, entered into the contract with said trustees, which is herewith exhibited, and to be taken as part of the bill of complaint marked exhibit No. 1. And the said trustees executed to your orators the contracts herewith above filed, and to be taken as part of this bill, marked exhibit No. 2.

Your orators were bound, as will be seen by reference to the first mentioned contract, to open the street within two years from the first of January, 1835, in consideration of which, as will be seen by reference to the contract marked No. 2, said trustees were bound to pay over to your orators from time to time the funds already realized, and which might be thereafter realized by said trustees from the operation of said lottery.

On the strength of these mutual obligations, your orators proceeded, at an expense exceeding fifteen thousand, say $15,104 54 cents, to purchase the property which was to be occupied by the street, (two of your orators, Bass and Green, contributing each six feet of ground, half the length of the street) to remove the houses standing thereon, and to open the street for public use, all of which they effected one year in advance of the two allowed by the contracts. The trustees, on their part, paid your orators the moneys which had been realized out of said lottery at the date of said contract, amounting to the sum of six thousand six hundred and eleven dollars and fifty-three cents; but having neglected to cause said lottery to be further drawn, your orators are losers by the transaction upwards of eight thousand dollars.

Your orators have from time to time requested the defendants to cause said lottery to be drawn, as they are by said contract bound to do, but they have hitherto absolutely refused to comply with said reasonable request of your orators; sometimes pretending, that the drawing of lotteries is prohibited by the constitution of Tennessee, article 11, sec. 5; and at other times, that by drawing said lottery they will subject themselves to the penalties of the law against lotteries, and particularly to those of an act of the General Assembly, entitled, "an act to prohibit the drawing of lotteries, and vending of lottery tickets," passed on the 13th day of February, 1835, being the 35th chapter of the acts of the General Assembly of that year; all which commissions and pretensions of the said trustees are contrary to equity and good conscience, and tend, and will result, in the serious injury of your orators, if they cannot have

remedy in this court; and they do, therefore, file this bill against the said Henry Hollingsworth, mayor of the city of Nashville, and the said Robert Woods and John P. Erwin, and not against the said Henry R. Cartmell, because your orators aver that he has removed beyond the limits of the United States, to the Republic of Texas, beyond the jurisdiction of this court. To the end, therefore, that the said Henry Hollingsworth, Robert Woods, and John P. Erwin, may be made defendants to this bill, that they may answer it, that they may be compelled by the decree of this court to cause said lottery to be drawn, till out of the proceeds a sum of money may be made which, when added to the sum already paid to your orators, may be equal to the sum expended by them in opening said street, not exceeding seventeen thousand dollars; that the necessary accounts may be taken by the clerk and master of this court, and that your orators have such other and further relief in the premises as their cause may require, and be consistent with equity. May it please your honors to grant the writ of subpœna ad respondendum, issuing, &c., directed, &c., commanding, &c., and as in duty bound, your orators will ever pray.

R. S. MEIGS, *Sol.*

Exhibit No. 1.

We, the undersigned, agree and undertake to and with the commissioners or trustees of the Union Street Lottery, upon receiving from them the funds already realized from the operations of said lottery, and all which may hereafter from time to time be realized, to open and extend said street within two years from the 1st of January last, according to the intention and meaning of the acts of the General Assembly of this State authorizing said lottery. And in case we fail to open said street within the time aforesaid, we hereby undertake and agree to refund to said commissioners or trustees, or their successors, the sums received by us respectively.

Witness our hand and seal, 3d March, 1835.

JNO. M. BASS, [L. S.]
A. L. P. GREEN, [L. S.]
J. T. ELLISTON, [L. S.]

Exhibit No. 2.

We, the undersigned commissioners or trustees of the Union Street Lottery, hereby agree to and with A. L. P. Green, Joseph T. Elliston, and John M. Bass, that we will pay over to them, from time to time, the funds already realized, and which *may hereafter be realized* by us from the operations of said lottery, for opening said street, upon their undertaking to open said street as contemplated by the act of the General Assembly of the State authorizing said lottery.

In witness whereof, we have hereunto subscribed our names this 3d day of March, 1835.

JNO. P. ERWIN,
H. K. CARTMELL,
ROBERT WOODS,
Commissioners or Trustees.

To which the following answer was filed:

To joint and several answers of Henry Hollingsworth, mayor of the town of Nashville, Robert Woods, and John P. Erwin, trustees, &c., to the bill of complaint of John M. Bass, A. L. P. Green, and Joseph T. Elliston, filed against them in the chancery court at Franklin, these respondents, saving to themselves the usual benefit of exception to the said bill of complaint, for answer thereto say: It is true, as stated in said bill, that the Legislature of the State of Tennessee did pass an act of Assembly, entitled as stated in the bill, and in substance and to the effect therein stated. It is also true that said trustees did take upon themselves the trust created by said act of Assembly, and make contracts thereunder with exchange and lottery brokers. It is also true that they received and invested as stated the sum of $6,611 53 cents. It is also true that, after this amount was received, said brokers gave up said contracts, and the prospect of raising the amount necessary to the opening of said street became unpromising, and in consequence thereof the contracts marked No. 1 and 2 were executed as stated in said bill. In pursuance of these contracts, these respondents did pay over to the complainants the amount specified in the bill, viz: $6,611 53, being the whole amount realized from lotteries under said law; and the complainants, as these respondents are informed and believe, and in fact in part know, went on and purchased the property and opened the street, as stated in the bill. What amount precisely the complainants paid for said property these respondents do not know, but believe the amount to be such as is stated in said bill. Whatever may be the legal effect of the act of Assembly giving them *power* to draw lotteries, &c., these respondents were always willing, so long as it was consistent with the law of the land, to go on and have lotteries drawn where they could be made profitable, for the purpose of carrying out the object of said act of Assembly. On 13th day of February, 1835, however, the General Assembly of the State of Tennessee passed "an act entitled an act to prohibit the drawing of lotteries and vending of lottery tickets," whereby it was made unlawful to draw lotteries, or sell tickets in lotteries, in the State of Tennessee. After the passage of this law, to the infraction of which heavy penalties are attached, these respondents did refuse to proceed further under said act of Assembly of 1831, believing the same to be repealed by said last mentioned act of Assembly. For the same reasons, and considering that said last mentioned act of Assembly is in accordance with the constitution of said

State, article 11, section 5, these respondents still refuse to proceed under said act of Assembly of 1831 to draw lotteries, and the reason thus assigned is not a pretence, but is the true and substantial and only reason why they have not proceeded with said lotteries. These respondents are ready and willing, if the act of Assembly of 1835 be not the law of the land, to proceed with said lotteries; but they are unwilling to adjudge said law to be void upon their own proper responsibility, and refer the matter for the decision of your honor.

Having fully answered, they pray to be here dismissed with their reasonable costs.

E. H. & T. EWING,
Sol. for defts.

And the cause was set for hearing, by consent, at the rules holden for the month of October, 1838. And now, to wit, on the 15th day of November, A. D. 1838, being the day and year first above written, the court ordered the following decree to be entered, and which is as follows, to wit: Be it remembered that this cause came on to be heard on this 15th day of November, 1838, before the honorable L. M. Bramlet, chancellor, &c., upon bill, answer, and exhibits, when it appeared to the satisfaction of the court that the act of the General Assembly of the State of Tennessee, passed the 13th February, 1835, entitled "an act to prohibit the drawing of lotteries and vending lottery tickets," is not constitutional, and that the same does not impair the obligation of any contract, as charged in the bill, or divest any right vested under the act of the General Assembly, passed the 5th day of November, 1831, entitled an act to authorize a lottery for the continuation of Union street, in the city of Nashville; and the said act of 1831 is repealed by the said act of 1835; which said act is the law of the land; and that the trustees mentioned in said act of 1831 are not bound, by the law of the land, to proceed in the drawing of any more lotteries, but, on the contrary, are prohibited from so doing. It is therefore ordered, adjudged, and decreed that the bill of complaints be dismissed, and that they pay the costs of this cause, and that execution issue, &c.

And the complainants pray an appeal from said decree to the supreme court of error and appeals at Nashville, which is granted, they having given bond and security to prosecute the same.

Appeal bond.

Know all men by these presents, that I, Rectum J. Meigs, am held and firmly bound unto Henry Hollingsworth, Woods & Erwin, in the penal sum of two hundred and fifty dollars, for the payment whereof well and truly to be made, I bind myself, my heirs, &c., this 15th day of November, 1838. The condition of the above obligation is such, that whereas John M. Bass and als. filed a bill in the chan-

cery court at Franklin against Hollingsworth and others, on the hearing of which a decree was rendered, and from which the complainants prayed and obtained an appeal to the supreme court of errors and appeals at Nashville.

Now, if the said appellants shall prosecute said appeal with effect, and pay such costs as may be ordered and decreed, then this obligation to be void, otherwise to remain in full force and virtue.

R. J. MEIGS, [L. S.]

STATE of TENNESSEE:

This is to certify that the foregoing is a full and true transcript of the record and proceedings of the court of chancery at Franklin, in said State, in the cause of Bass, Green and Elliston, complainants, against Hollingsworth, Woods and Erwin, defendants.

In testimony whereof, I, Benjamin Litton, clerk and master of said court, have hereunto set my hand and affixed the [L. S.] seal of said court, at office this 10th day of December, A. D. 1838, and 62d year of American independence.

BENJ. LITTON.

And now, at a supreme court of errors and appeals for the State of Tennessee, at Nashville, begun and held on 1st Monday in December, 1838, present the honorable Nathan Green, William B. Reese, and William B. Tinley, judges of said court, the following proceedings were had, to wit:

BASS, GREEN and ELLISTON, complts., vs. THE MAYOR OF NASHVILLE et als., defts. } *In equity.*

Be it remembered, that this cause came on to be heard on this 22d day of January, 1839, before the honorable William B. Reese, William B. Tinley and Nathan Green, judges, &c., upon the transcript of the record from the chancery court at Franklin, containing bill, exhibits, answers, and application, when it appeared to the court that the act of the General Assembly of the State of Tennessee, passed 13th February, 1835, entitled "an act to prohibit the drawing of lotteries and vending lottery tickets," is not unconstitutional, and that the same does not impair the obligation of any contracts, as charged in the bill, or divest any rights vested under the act of the General Assembly, passed 5th November, 1831, entitled an act to authorize a lottery for the continuation of Union street, in the city of Nashville; that the said act of 1831 is repealed by the said act of 1835, which said last act is the law of the land, and that the "trustees" mentioned in said acts of 1831 are not bound, by the law of the land, to proceed in the drawing of any more lotteries, but, on the contrary, are prohibited from so doing. It is therefore ordered, adjudged, and decreed, that the decree of the chancery court be affirmed, and that the bill of complainants be dismissed, and that they pay the costs of this cause, for which execution may issue as at law.

STATE OF TENNESSEE:

I, J. P. Clark, clerk and master of the supreme court of errors and appeals at Nashville, do hereby certify that the foregoing is a full and true transcript of the record and proceedings had in said court in said cause, as the same appears on record in my office.

In testimony whereof, I have hereto set my hand and affixed
[L. S.] the seal of said court, at office at Nashville, this 5th July, A. D. 1843, and 68th year of American independence.

J. P. CLARK.

THE UNITED STATES, *ss.*

The President of the United States to the judges of the su-
[L. S.] preme court of errors and appeals of the State of Tennessee, held at Nashville.

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which [is] in the said supreme court of errors and appeals, before you or some of you, between John M. Bass, A. L. P. Green and Joseph T. Elliston, complainants, and Henry Hollingsworth, mayor of the city of Nashville, Robert Woods and John P. Erwin, defendants, a manifest error hath happened, to the great damage of the said complainants, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, *we* command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the *Supreme Court of the United States*, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected by the said Supreme Court, may cause further to [be] done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth.

JACOB W. GAVOCK,
Clerk of the circuit court for the district of West Tennessee.

THE UNITED STATES,
Seventh circuit, district of West Tennessee.

To Henry Hollingsworth, Robert Woods and John P. Erwin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday in January next, pursuant to a writ of error filed

in the clerk's office of the supreme court of errors and appeals, in the State of Tennessee, at Nashville, wherein John M. Bass, A. L. P. Green and Joseph T. Elliston, are plaintiffs in error, and Henry Hollingsworth, Robert Woods and John P. Erwin, are defendants, to show cause, if any there be, why the judgment rendered against the said John M. Bass and others, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Nathan Green, one of the judges of the supreme court of errors and appeals of Tennessee, at Nashville, this fourth day of January, 1843.

NATHAN GREEN.

We acknowledge service of a copy of the above citation, January 4, 1843.

H. HOLLINGSWORTH, *Ex-Mayor of Nas.*
J. P. ERWIN,
ROBERT WOODS,
THOMAS COLEMAN, *Mayor.*

In presence of,
ROBERT MCCULBOROUGH,
JAMES TODD.

Filed,